

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION ) MDL No. 1456  
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) Civil Action No. 01-12257-PBS  
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THIS DOCUMENT RELATES TO: ) Judge Patti B. Saris  
ALL CLASS ACTIONS )  
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**DECLARATION OF KIM B. NEMIROV IN SUPPORT OF DEFENDANTS'  
CONSENTED-TO JOINT MOTION FOR LEAVE TO FILE UNDER SEAL**

I, KIM B. NEMIROV, hereby declare:

1. I am a member of the bar of the Commonwealth of Massachusetts and of this Court. I am an associate with Ropes & Gray LLP, and counsel to Defendants Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (collectively the "Warrick Defendants"). I submit this Declaration in support of Defendants' Consented-To Joint Motion For Leave To File Under Seal.

2. Per the Court's directive during the May 16, 2007 Status Conference, on May 21, 2007 plaintiffs produced certain proprietary pricing data to the Warrick Defendants in an effort to support their allegations of FUL manipulation by the Warrick Defendants.

3. The Warrick Defendants intend to attach a copy of the May 21, 2007 Letter as an exhibit to their joint submission on the FUL and PAD issue that the Court has requested be filed by this Friday, June 22, 2007.

4. The data produced by plaintiffs to the Warrick Defendants includes hundreds of pages of highly confidential and proprietary pricing data produced to plaintiffs by wholesalers AmerisourceBergen and McKesson.

4. Specifically, the AmerisourceBergen data contains 69 pages of specific pricing information, such as the “high” and “low” prices paid to AmerisourceBergen by various classes of providers for Warrick’s products.

5. The AmerisourceBergen data moreover contains the “average” prices paid by providers to AmerisourceBergen for the Warrick Defendants’ products.

6. I understand that the data produced to all defendants pursuant to the Court’s directive on May 16, 2007 is similar in nature to that produced to the Warrick Defendants as described above.

7. The data produced to defendants by plaintiffs on May 21, 2007 is “Highly Confidential” under paragraph 5 of the Protective Order entered by this Court on December 13, 2002 (the “Protective Order”) as it contains mass amounts of data relating to the “pricing of pharmaceuticals.”

8. I understand that counsel for plaintiffs consents to these letters being filed under seal.

I declare under penalty of perjury that the foregoing is true.

/s/ Kim B. Nemirow  
Kim B. Nemirow

EXECUTED this 20<sup>th</sup> day of June, 2007 in Boston, Massachusetts.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Kim B. Nemirov \_\_\_\_\_  
Kim B. Nemirov